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September 10, 1998

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OUR FILE NO.

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**VIA MESSENGER**

Magalie Roman Salas

Secretary

Federal Communications Commission

1919 M Street, N.W.

Room 222

Washington, D.C. 20554

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SEP 10 1998

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Re: Memorandum of Oral *Ex Parte* Presentations and  
Copies of Written *Ex Parte* Presentations in MM  
Docket No. 87-268

Dear Ms. Salas:

We represent Pappas Telecasting of Southern California, L.L.C. ("Pappas Telecasting"). Pappas Telecasting currently holds an outstanding construction permit from the Commission that authorizes Pappas Telecasting to build a new UHF commercial television broadcasting station on analog Channel 54 in Avalon, California (File No. BPCT-860210KM, as amended, granted by an action of the Commission's General Counsel, taken pursuant to delegated authority on June 2, 1998).

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Magalie Roman Salas  
September 10, 1998  
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An original and one copy of this letter and its enclosures are being submitted herewith in compliance with Sections 1.1206 (b)(1) and 1.1206(b)(2) of the Commission's Rules with respect to certain oral *ex parte* presentations and written *ex parte* presentations that were made by and on behalf of Pappas Telecasting on September 9 and 10, 1998 to, and in separate meetings with, the following Commission personnel:

Anita L. Wallgren  
Richard Chessen  
Helgi C. Walker  
Jane E. Mago  
Susan Fox  
Roy J. Stewart  
Keith Larson  
Gordon W. Godfrey  
Bruce A. Franca

Present at all such meetings were Harry J. Pappas (a principal of Pappas Telecasting), Rosemary Dannon (a consultant to Pappas Telecasting), and the undersigned, as counsel to Pappas Telecasting.

The matters that were discussed in the oral *ex parte* presentations were Pappas Telecasting's request to the Commission to allot a digital television broadcasting station channel to Avalon, California that would be "paired" with the allotment of analog Channel 54 to Avalon, and certain legal, policy, and technical issues related thereto. For additional information, reference is made to copies of the written *ex parte* presentations that are enclosed with this letter (consisting of a two-page document entitled "Request for Digital Television Channel Allotment to Avalon, California," as well as copies of electronic-mail messages that were sent on this date to Ms. Wallgren and Ms. Mago by the undersigned), and to Pappas Telecasting, *et al.*'s May 1, 1998 "Petition for

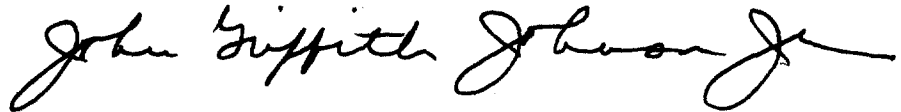
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Magalie Roman Salas  
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Reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order" and Pappas Telecasting's July 17, 1998 "Supplement to Petition for Reconsideration of the Commission's Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order" in MM Docket No. 87-268.

In the event that the Commission or its staff should have any questions concerning this matter, kindly refer them to Pappas Telecasting's undersigned counsel.

Sincerely yours,

A handwritten signature in black ink, reading "John Griffith Johnson, Jr." with a stylized flourish at the end.

John Griffith Johnson, Jr.  
of PAUL, HASTINGS, JANOFSKY & WALKER LLP

Enclosures

cc (with enclosures, all via messenger):

Anita L. Wallgren  
Richard Chessen  
Helgi C. Walker  
Jane E. Mago  
Susan Fox  
Roy J. Stewart  
Keith Larson  
Gordon W. Godfrey  
Bruce A. Franca

## **REQUEST FOR DIGITAL TELEVISION CHANNEL ALLOTMENT TO AVALON, CALIFORNIA**

The Fifth Report and Order and the Memorandum Opinion and Order on Reconsideration of the Fifth Report and Order in the Advanced Television proceeding (MM Docket No. 87-268) ruled that only persons or entities who held licenses or construction permits for analog television stations on April 3, 1997 (the date on which the Fifth Report and Order was adopted) are eligible to receive digital television ("DTV") channel allotments.

Pappas Telecasting of Southern California, L.L.C. ("Pappas") was granted a construction permit for a new analog station to serve the community of Avalon, California on Channel 54 on June 2, 1998.

Pappas has petitioned the Commission to reconsider its decision with respect to Pappas's ineligibility to receive a DTV allotment for Avalon, to be "paired" with the analog Channel 54 allotment, for the following reasons:

- Pappas's engineering consultant identified a DTV channel (Channel 29) which can be allotted to Avalon, paired with Channel 54, and operated from a multi-user communications site on Mount Wilson, without deleterious impact upon any analog or DTV station.
- Pappas acquired the permit for the analog station in Avalon as a result of paying eight applicants for that permit to dismiss their applications. The payments were made pursuant to the Balanced Budget Act of 1997, which allowed Pappas to pay the dismissing applicants more than their application preparation and prosecution expenses. Pappas could not have been granted the permit by April 3, 1997, since the Balanced Budget Act (which made those payments possible) was not signed into law until August, 1997.
- Pappas obtained the permit for the analog station by amending into one of the eight remaining applications in a comparative hearing proceeding that dated back to 1985. The application into which Pappas amended was filed on February 10, 1986. In the Fifth

Report and Order, the Commission stated that it “. . . will give particular consideration for assigning temporary DTV channels to new licensees who applied on or before October 24, 1991, given the reliance that these parties may have placed on rules we adopted before passage of . . . .” the Telecommunications Act of 1996 (the “Telecom Act”). Pappas’s research indicates that there are only two or three other permittees of analog stations who were granted their permits after April 3, 1997, based upon applications that were filed prior to October 24, 1991. No “floodgates” will open.

- The Telecom Act does not prevent the Commission from granting Pappas the relief it seeks. The Telecom Act merely states that the Commission should limit the initial eligibility for DTV authorizations to those persons or entities who, on the date of the issuance of the DTV authorizations, hold either a license or a construction permit for an analog station. The Commission has discretion to decide what that date will be.
- Substantial equities favor relief in this instance. Had it not been for the Commission’s freeze of comparative hearing proceedings following the Court’s decisions in Bechtel v. FCC, the grant by the Commission of a permit for an analog station to operate on Channel 54 in Avalon would have become final long before April 3, 1997. In fact, the Commission granted one of the eight applications in 1992, only to have the grant appealed and then remanded by the Court following the Bechtel decisions.
- The public interest would be served by a grant of relief. Pappas proposes an ambitious and novel program service that depends upon having the channel capacity of both the analog and the DTV station. The service would involve the simultaneous, over-the-air transmission of multiple channels of Asian-language programming, on a subscription basis, to the Chinese, Japanese, Filipino, Korean, Malaysian, Vietnamese, Laotian, and other underserved minority populations in the Greater Los Angeles metropolitan area, including content originating in the native countries and content originating in Los Angeles of distinctly local interest.

**From:** JOHN JOHNSON  
**To:** SMTP:"awallgre@fcc.gov"  
**Date:** 9/10/98 12:18pm  
**Subject:** Avalon, California DTV Channel Allotment Issue

Anita, thanks again for your time and attention to our Avalon, CA DTV channel allotment issue. To follow through on our conversation:

1. I misstated the location of one of the other cases in which a permit to construct a new analog station was granted after April 3, 1997, based upon an application that had been filed prior to October 24, 1991. In addition to our own case, I told you that there was one in Fredericksburg, Texas and one in a community somewhere in Washington State that I couldn't remember. Upon checking my notes, I find that the second case was actually in Sheridan, Wyoming (not in Washington State). In addition, we are told by John Riffer that his office may soon be granting a fourth such permit, involving Charlottesville, Virginia. So, the total number of parties that are comprehended within Footnote 26 of the Fifth Report and Order is currently three and perhaps soon to be four, according to our research.
2. We spoke to our engineering consultant to ask him your question to us, namely, did he take into consideration other petitions for reconsideration of the Memorandum Opinions and Orders on Reconsideration of the Fifth Report and Order and the Sixth Report and Order to determine whether any of them propose DTV channel allotments that would be in conflict with our proposed DTV channel allotment to Avalon. He confirmed that he did not review those petitions for reconsideration, so we are now in the process getting that information. I'll let you know how it turns out.

**CC:** SMTP:"rosemary@ndtcla.com", pappas, DDBURNS

**From:** JOHN JOHNSON  
**To:** DOMAIN1.SMTP."jmag@fcc.gov"  
**Date:** 9/10/98 12:09pm  
**Subject:** Fredericksburg, Texas

Jane, thanks again for your time and attention to our Avalon, CA DTV channel allotment issue. To follow through on your question as to the location of Fredericksburg, Texas, my map shows it to be about 60 miles north-northwest of San Antonio and about 60 miles due west of Austin.

**CC:** DOMAIN1.SMTP."rosemary@ndtcla.com", pappas, DDBURN...